IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18729 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHABHAI AMTHABHAI PRAJAPATI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR BIPIN I MEHTA for Petitioner(s) : 1,
MR M R MENGDE AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/09/2005

ORAL JUDGMENT

1.Rule. Mr.M.R. Mengade, learned AGP waives service of rule on behalf of the State.

2.With the consent of the parties, the matter is taken up for final hearing today.

3.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dtd.8/8/2005 in Revision Application No.9 of 2005 in dismissing the said revision application on the ground of limitation.

4.It is the case on behalf of the petitioner that the petitioner has purchased Plot No.12

admeasuring 141.91 mesquite, of land from Nathabhai Punjabhai Mansuri and it appears that earlier permission for using the aforesaid land for Non-Agriculture was granted by the Competent Authority i.e. District Development Officer, Sabarkantha and one of the condition was to put up the construction within stipulated time. It also appears that there was breach of order dtd.6/10/1982 passed by the District Development Officer granting NA Permission and therefore, proceedings were initiated by the Collector, Sabarkantha and an order came to be passed by the Collector, Sabarkantha on 26/10/1994 cancelling the NA Permission. It appears from the record that a common order came to be passed cancelling the NA Permission with regard to other plots also. It also appears that thereafter, the petitioner came to be served with a show cause notice dtd.29/8/2002 issued by the Collector, Sabarkantha under sec.66 of the Bombay Land

Revenue Code (hereinafter referred to as “the Code” for convenience) and the petitioner is directed to show cause as to why NA Permission granted vide order dtd.6/8/1982 should not be cancelled. It is the case of the petitioner that the petitioner immediately submitted an application for extension of time to put up the construction. However, thereafter, nothing further has been done to the show cause notice dtd.29/8/2002. It is also the case of the petitioner that thereafter the petitioner came to know that in fact order was already passed on 26/10/1994 by the Collector, Sabarkantha cancelling the NA Permission and therefore, the petitioner preferred Revision Application No.9 of 2005 before the Secretary (Appeals), Revenue Department, State of Gujarat and it was contended on behalf of the petitioner that the said order with regard to cancellation of the NA Permission qua other plots came to be challenged by the other other plot holders

before the Secretary (Appeals) who by judgement and order dtd.4/1/1996 quashed and set aside the order of the Collector and remanded the matter to the Collector, Sabarkantha and therefore, it is requested to remand the matter to the Collector. However, Revision Application preferred by the petitioner being Revision Application No.9 of 2005 came to be dismissed by the Addl.Secretary (Appeals), Revenue Department, State of Gujarat vide judgement and order dtd.8/8/2005 on the ground that the said revision application is filed after a period of 10 years and 4 months. Being aggrieved by and dissatisfied with the order passed the Addl.Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.9 of 2005 dtd.8/8/2005, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

5.Mr.Bipin Mehta, learned advocate appearing on behalf of the petitioner has vehemently submitted that when the very order passed by the Collector qua the other plot holders was set aside and it was remanded, the Addl.Secretary ought to have remanded the matter to the Collector. It is also further submitted that in fact the petitioner was not aware of the order passed by the Collector, Sabarkantha dtd.26/10/1994 cancelling the NA Permission and it appears that even the Collector, Sabarkantha was also not aware, otherwise, the Collector, Sabarkantha would not have issued notice again vide notice dtd.29/8/2002 calling upon the petitioner to show cause as to why N.A. Permission granted vide order dtd.6/10/1982 should not be cancelled. Therefore, it is submitted that when the Collector himself was not aware of the order passed in 1994 cancelling the N.A. Permission, the Addl.Secretary ought not to

have dismissed the revision application on the ground of limitation and, therefore, it is requested to allow the present petition.

6.Mr.Mengade, learned AGP has submitted that as there was no entry with regard to the order passed by the Collector, Sabarkantha dtd.26/10/1994, in the revenue record, the Collector, Sabarkantha again issued again show cause notice on 29/8/2002 directing the petitioner to show cause as to why NA Permission granted vide order dtd.6/10/1982 should not be cancelled. He has further submitted that nothing has been done thereafter, i.e. after issuance of the show cause notice dtd.29/8/2002.

7.Heard the learned advocates appearing on behalf of the parties.

8.Heard the learned advocates and perused the

material on record. It is not disputed by Mr.Mengade, learned AGP that the very order passed by the Collector, Sabarkantha dtd.26/10/1994 came to be set aside by the Secretary (Appeals), Revenue Department, State of Gujarat vide judgement and order passed in Revision Application Nos.20, 54 and 16 of 1994 dtd.4/1/1996 and the said matters came to be remanded to the Collector. It is required to be noted that even the Collector, Sabarkantha was not aware of the earlier order passed by the very office on 26/10/1994 by which the NA Permission granted vide order dtd.6/10/1982 came to be quashed and set aside, otherwise, the office of the Collector would not have issued fresh notice dtd.29/8/2002 calling upon the petitioner to show cause as to why NA Permission granted vide order dtd.6/10/1982 should not be cancelled. Under the circumstances, the contention on behalf of the petitioner that he was not aware of the order

dtd.26/10/1994 is required to be accepted and the matter is required to be remanded to the Secretary (Appeals). However, in view of the fact that the very order passed by the Collector, Sabarkantha dtd.26/10/1994 with respect to other plot holders came to be set aside by the Secretary (Appeals) and the matter was remanded to the Collector, Sabarkantha, instead of remanding the matter to the Secretary (Appeals), this Court proposes to remand the matter to the Collector, Sabarkantha for passing a fresh order in accordance with law and on merits, after giving an opportunity of being heard to the petitioner.

9.For the reasons recorded hereinabove, the petition succeeds. The judgement and order passed by the Addl.Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.9 of 2005 dtd.8/8/2005 as well as order passed by the Collector, Sabarkantha

in Branch of Condition Case No.8 of 1994 dtd.26/10/1994 qua the plot of the petitioner bearing Plot No.12, are hereby quashed and set aside and the matter is remanded to the Collector, Sabarkantha for passing a fresh order in accordance with law and on merits, after giving opportunity of being heard to the petitioner, as expeditiously as possible, preferably within a period of four months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

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